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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 MILTON JOEL VARELA ARTEAGA,

12 Defendant.

Case No. 3:23-cr-00473-CRB-1

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**ORDER OF DETENTION**

**INTRODUCTION**

The Court completed the detention hearing in this matter on Friday, January 12, 2024. The Defendant appeared before this Court on the Government's motion for detention. The Defendant was present, with the assistance of a Spanish interpreter, and was represented by counsel. Having conducted a detention hearing and considered the materials submitted by the Government, the defense, and Pretrial Services, the Court ruled on the record at the hearing that the Government has met its burden of proof and that the Defendant should be detained. For the reasons stated on the record at the hearing (incorporated herein by reference), and as further discussed herein, the Court makes the following findings of fact and rulings as set forth below. As such, this Order supplements the Court's findings and verbal Order at the detention hearing and serves as written Findings of Fact and a Statement of Reasons pursuant to 18 U.S.C. § 3142(i)(1).

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**BACKGROUND**

On December 13, 2023, Defendant Milton Joel Varela Arteaga (herein, "Defendant" or "Arteaga") was charged by indictment with three counts of possession with intent to distribute 40 grams and more of a mixture and substance containing fentanyl (Counts Two, Three, and Four), in

**ORDER OF DETENTION**

1 violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(vi). *See* Dkt. 14. At the arraignment in this matter,  
2 the Government indicated its intention to move for detention. The Government filed its  
3 memorandum in support of its detention motion on December 20, 2023. *See* Dkt. 24.

4 The detention hearing was initially set for December 19, 2023. *See* Dkt. 16. The  
5 Government and Defendant stipulated to continue the detention hearing to December 21, 2023 in  
6 order to allow Pretrial Services to complete a bail study. *See* Dkts. 21 and 22 (Stipulation and  
7 Order Granting Stipulation dated December 18, 2023). Pretrial Services issued its first Pre-Bail  
8 Report on December 20, 2023, which (in part) indicated that Pretrial Services had not yet had an  
9 opportunity to interview the then-proposed surety, Ms. Gabriela Escorza (Defendant's significant  
10 other and mother of one of his children). *See* Dkt. 23. The detention hearing was started on  
11 December 21, 2023 but not completed because the defense requested further time to develop a  
12 proposed release plan, which (at the time) would potentially include two alternative proposed  
13 sureties. *See* Dkt. 25. At the defense's request, the detention hearing was further continued to  
14 December 27, 2023 and held before the undersigned. *See* Dkt. 26.

15 At the December 27 hearing, the first proposed surety, Ms. Escorza, was not present and  
16 thus the Court was unable to query her as to her suitability as a surety. At that hearing, the  
17 defendant's alternative second proposed surety, Mr. Jeremy Willis (who is Ms. Escorza's cousin),  
18 was also not present and, because Pretrial Services had not received his contact information  
19 previously, had not yet been interviewed by Pretrial Services. At the Defendant's request, the  
20 detention hearing was further continued to January 4, 2024, in order to allow Pretrial Services time  
21 to interview both Ms. Escorza and Mr. Willis and prepare Pre-Bail Reports. Pretrial Services  
22 submitted a further Pre-Bail Report on December 28, 2023 after interviewing Ms. Escorza. *See*  
23 Dkt. 27. Pretrial Services submitted a Second Addendum Report on January 2, 204 after  
24 interviewing Mr. Willis. *See* Dkt. 29. In that Second Addendum Report, Pretrial Services  
25 concluded that Mr. Willis is not a suitable bail co-signer because of his lack of employment. *Id.* at  
26 3. Subsequently, on January 2, 2024, defense counsel provided the contact information for a third  
27 proposed surety, Mr. Henry Pena, to Pretrial Services. *See* Dkt. 32 at 2. On January 3, 2024,  
28 Pretrial Services submitted a Third Addendum Report after interviewing Mr. Pena. *Id.*

1       On January 4, 2024, the Government submitted to the Court and defense counsel copies of  
2 two bank statements (for the period of September 20, 2023 to October 19, 2023 and the period of  
3 October 20, 2023 to November 17, 2023) for Ms. Escorza's bank account with Bank of America.  
4 The Government also submitted to the Court and defense counsel a copy of a Counter Deposit  
5 slip, dated November 6, 2023, for a deposit in the amount of \$47,790 by Ms. Escorza into that  
6 same bank account. (As of the date of this Order of Detention, these bank account statements and  
7 deposit slip do not have docket numbers.)

8       At the next session of the detention hearing on January 4, 2024, neither the first or second  
9 proposed sureties, Ms. Escorza and Mr. Willis, were present. At that hearing, the defense  
10 withdrew Ms. Escorza as a proposed surety. The third proposed surety, Mr. Pena, was present. At  
11 that hearing, the defense proposed a fourth potential surety, Ms. Alisha Logsdon (Mr. Pena's  
12 significant other), who was not present, and the defense requested additional time for Pretrial  
13 Services to interview Ms. Logsdon. *See* Dkt. 33. The parties were further ordered to provide  
14 Pretrial Services with information relevant to Defendant's instance of a failure to appear and other  
15 instances of making appearances in a pending criminal matter in Alameda County Superior Court.  
16 On January 11, 2024, defense counsel provided to Pretrial Services a copy of the "Clerks Docket  
17 and Minutes" from the pending criminal proceeding in Superior Court for Alameda County  
18 against Defendant (Docket No. 22-CR-004796), which indicates that Defendant appeared at three  
19 pretrial hearings in that matter and failed to appear at a hearing on May 2, 2022. (As of the date of  
20 this Order of Detention, the copy of the "Clerks Docket and Minutes" are not filed in the docket of  
21 this case in this Court). Subsequently, on January 11, 2024, Pretrial Services submitted a Fifth  
22 Addendum Report after interviewing Ms. Logsdon, which provided updated information regarding  
23 Ms. Escorza as well as information on Defendant's appearances and failure to appear in the  
24 Alameda County Superior Court matter. *See* Dkt. 35.

25       With regard to Ms. Escorza, Pretrial Services reported as follows: "Pretrial Services called  
26 Ms. Escorza on January 11, 2024, and she informed she is currently living in Honduras with her  
27 children. When asked if she plans on returning to the United States, she reported she will only  
28 return if the defendant is released from custody." *Id.* at 3.

1       On January 11, 2024, the Government submitted a search warrant (with supporting  
2 affidavit) to the Court, as well as to defense counsel and Pretrial Services. At that time, the search  
3 warrant package was under seal, however at the January 12, 2024 detention hearing, the  
4 Government moved to unseal the search warrant package, which was unopposed by the  
5 Defendant. The search warrant was issued by this Court's duty judge on January 8, 2024, and is  
6 titled "In the Matter of the Search of [sic] Application of the United States for a Search Warrant  
7 for One Storage Unit for Investigation of 21 U.S.C. 841 and Other Offenses." (As of the date of  
8 this Order of Detention, there is no docket number currently for the search warrant.) Because the  
9 motion to unseal the search warrant application was granted without objection, this Order of  
10 Detention is not filed under seal.

11       The application for the search warrant is supported by an affidavit of a Special Agent for  
12 Homeland Security Investigations. The target of the search warrant is a storage unit apparently  
13 rented by Mr. Willis on behalf of Ms. Escorza, and that storage unit was (according to the  
14 affidavit) being used to store narcotics. According to the affidavit, Ms. Escorza and Defendant  
15 Arteaga exchanged text messages on October 6, 2023 in which they discuss Arteaga's request for  
16 a delivery of narcotics to his location in Oakland, California and Ms. Escorza's instructions to a  
17 third-party juvenile to retrieve narcotics from a storage unit and deliver them to Arteaga at that  
18 location in Oakland.

19       Because of the changing cast of potential sureties and evolving facts as the hearing and  
20 interviews continued, Pretrial Services' recommendations similarly evolved as more information  
21 was obtained. *Compare* Dkt. 15 with Dkts. 34-35. At the January 12, 2024 hearing, Pretrial  
22 Services verbally modified their recommendation from their final Fifth Addendum Report,  
23 specifically in response (at least in part) to the new fact that Ms. Escorza and Defendant's children  
24 are now in Honduras: In addition to the other recommended conditions in the Fifth Addendum  
25 Report, Pretrial Services recommended that proposed co-sureties (Mr. Pena and Ms. Logsdon) co-  
26 sign onto a secured bond in the amount of \$75,000, or alternatively, an unsecured bond in the  
27 amount of \$150,000. At the hearing, the defense objected to a secured bond, but represented (after  
28 discussion) that all three proposed co-sureties (Mr. Willis, Mr. Pena, and Ms. Logsdon) would

1 agree to co-sign on an unsecured bond in the amount of \$150,000 (while preserving objection to  
2 Pretrial Services' increase of their recommended unsecured bond amount). The Government's  
3 arguments at the hearing focused on detention due to risk of flight or non-appearance (and thus  
4 opposed any of the co-sureties being appointed and also opposed the specifically proposed sureties  
5 as unsuitable). The Government also moved for detention based on danger to others or the  
6 community, as discussed further herein. Fundamentally, the Government opposed release on any  
7 conditions, as discussed in their memorandum and as argued at the hearing.

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## DISCUSSION

10 In considering the Government's request for detention, the Court is guided by several general  
11 principles. First, at all times the Defendant is entitled to the presumption of innocence. Nothing  
12 that took place in the hearing or that is set forth herein is intended, or should be construed, to  
13 affect that presumption. Rather, the purpose of the hearing was to determine whether,  
14 notwithstanding that presumption of innocence, the Defendant should be detained pending trial.

15 Second, “[i]n our society, liberty is the norm, and detention prior to trial or without trial is  
16 the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Bail  
17 Reform Act “carefully limits the circumstances under which detention may be sought to the most  
18 serious of crimes.” *Id.* at 747 (citing 18 U.S.C. § 3142(f)). Under the Bail Reform Act, a  
19 Defendant must be released prior to trial unless a judicial officer finds that no conditions or  
20 combination of conditions exist which will “reasonably assure” the appearance of the Defendant  
21 (if the Government seeks detention based on risk of flight), or reasonably assure the safety of any  
22 other person in the community (if the Government seeks detention based on the defendant being a  
23 danger to the community). The Bail Reform Act requires that the least restrictive conditions be  
24 imposed that are necessary to provide those reasonable assurances. If the Court cannot find any  
25 conditions that will reasonably assure the appearance of the Defendant as required or the safety of  
26 the persons in the community, then the Court is required by the Act to order the Defendant held in  
27 custody.

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The Government has the burden of proof by a preponderance of the evidence that no

1 condition or combination of conditions can reasonably assure the appearance of the Defendant as  
2 required. The Government has the burden of proof by clear and convincing evidence that no  
3 condition or combination of conditions can reasonably assure the safety of any other person and  
4 the community. Because all Parties agree that this case involves the rebuttable presumption, the  
5 burden of production is on the Defendant to rebut the presumption, although that is not necessarily  
6 a heavy burden. A presumption may be rebutted using information contained in a Pre-Trial  
7 Services Report, for example. Even in a case such as this involving a rebuttable presumption, the  
8 burden of persuasion is always on the Government.

9 As noted, the detention hearing in this matter was first held on December 21, 2023 (after  
10 being continued by stipulation between the Parties). *See* Dkt. 25. Per the defense's requests for  
11 more time to allow a complete record to be presented regarding potential sureties, the detention  
12 hearing was ultimately completed on January 12, 2024. Indeed, at the hearing session on January  
13 4, 2024, neither Party opposed or objected to completing the detention hearing on January 12,  
14 2024. In light of the unique circumstances regarding the number of proposed sureties and time  
15 needed for the Parties to prepare for the hearing in light of the developing factual record (and the  
16 time needed for Pretrial Services to interview and provide reports), the Court find that there was  
17 good cause to conduct the detention hearing over multiple sessions to complete the hearing with  
18 an adequate record and to allow the Parties necessary time to prepare. *See* 18 U.S.C. § 3142(f)  
19 ("The person may be detained pending completion of the hearing. The hearing may be reopened,  
20 before or after a determination by the judicial officer, at any time before trial if the judicial officer  
21 finds that information exists that was not known to the movant at the time of the hearing and that  
22 has a material bearing on the issue whether there are conditions of release that will reasonably  
23 assure the appearance of such person as required and the safety of any other person and the  
24 community.").

25 Applying the applicable legal standards and principles, and based upon the information  
26 contained in the Pretrial Services Report, the evidence presented by the Parties including at the  
27 hearing, and the arguments of counsel, the Court finds as follows:

28 This case involves a rebuttable presumption that no condition or combination of conditions

1 will reasonably assure the appearance of the person as required and the safety of the community  
2 pursuant to 18 U.S.C. § 3142(e)(3). Specifically, Defendant is charged with an offense for which  
3 a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances  
4 Act, 21 U.S.C. §§ 801 *et seq.* The charges against the Defendant carry a mandatory minimum  
5 term of imprisonment of five years and the Sentencing Guidelines range is approximately ten  
6 years. Further, the charges against the Defendant involve narcotics offenses occurring on May 11,  
7 2023, June 28, 2023, and November 29, 2023, as detailed in the Indictment. For the reasons stated  
8 herein as well as on the record, the Defense has not overcome or rebutted the presumption that no  
9 condition or combination of conditions will reasonably assure the appearance of Defendant  
10 Arteaga.

11 The Government argues for detention first because there are no conditions that would  
12 reasonably assure Defendant's appearance based on the facts in the record. *See* 18 U.S.C. § 3142(g).  
13 In analyzing this issue, the Court has reviewed the statutory factors under § 3142(g) and applicable  
14 case law, and find as follows:

15 With regard to the nature and circumstances of the offenses charged, the Defendant faces a  
16 potential sentence range (and a potential maximum sentence) of such length and severity that the  
17 Defendant has an incentive to flee. As noted in the Indictment, the Defendant (or his residence or  
18 automobile) were searched several times, and at each instance the Defendant was found with large  
19 amounts of cash (on May 11, 2023: \$70,000; on June 28, 2023: \$12,000; and on November 29,  
20 2023: \$13,000). He has thus demonstrated a repeated ability to obtain significant amounts of cash  
21 in short periods of time, and such apparently easy access to cash would provide the means to flee.

22 With regard to family ties, the Court finds that this factor leans substantially in finding no  
23 conditions of release would reasonably assure the Defendant's appearance. The Defendant's mother  
24 (with whom he maintains weekly contact) and siblings (two brothers and four sisters, with whom  
25 he maintains monthly contact) are all residents of Honduras. *See* Dkt. 23 at 1. Defendant has two  
26 children from a previous relationship who reside in Honduras with their mother, and he provides  
27 voluntary child support for his children. *See id.* at 2.

28 Further, and most significant, Ms. Escorza (Defendant's current partner and significant other

1 for the last five or six years) has fled to Honduras recently (during the pendency of this matter) and  
2 now resides in Honduras with the daughter she shares with Defendant Arteaga. *See* Dkt. 35 at 3.  
3 Ms. Escorza has an older child (a son) from a prior relationship whom she also brought with her  
4 when she fled to Honduras. At the hearing, the proposed sureties (particularly Mr. Pena) all testified  
5 that Defendant Arteaga treats and refers to this older child as his own son. Indeed, Mr. Pena testified  
6 with great emotional sincerity that the reason he was volunteering to be a co-signer and surety was  
7 because he has observed over the last several years how devoted and connected Defendant Arteaga  
8 is to the children he shares with Ms. Escorza. Mr. Pena thus testified that he wants to do whatever  
9 he can to support Defendant Arteaga's desire to reunify with his family, because Mr. Pena is so  
10 touched by the depth of Defendant Arteaga's commitment to being with the children he shares with  
11 Ms. Escorza. The fact that those children are now in Honduras thus gives Defendant Arteaga  
12 substantial motive to flee, given the universally recognized depth of feelings and close relationship  
13 he has with his children. In addition, Ms. Escorza's statement to Pretrial Services indicates no  
14 present intention on her part to return to the United States, and thus for that additional reason,  
15 Defendant has incentive and motivation to flee in order to be with her.

16 The Court finds that Ms. Escorza's statement that she would consider returning to the United  
17 States "if" Defendant Arteaga were released to be a troubling indicator of potential bad faith on her  
18 part. First, that statement is not binding on Ms. Escorza in any way and there is no reasonable basis  
19 for the Court to make a decision to release a defendant based on a hypothetical statement by a  
20 significant other. Second, her conditioning her hypothetical return to the United States on whether  
21 or not Defendant is released indicates a lack of willingness to support Defendant with visits and  
22 court appearances should he be detained, further undercutting the credibility that she would actually  
23 return.

24 Third, the Court finds that Ms. Escorza's statement about whether she would return to the  
25 United States is not credible given (a) her apparent involvement in the storing and/or delivery of  
26 narcotics (as averred in the search warrant affidavit), (b) her apparent involvement in depositing and  
27 wire transferring suspiciously large amounts of money through her bank account (amounts far larger  
28 than the salary she earned as a house cleaner would account for), and (c) the timing of her relocation

1 to Honduras. Finally, because Ms. Escorza knew she was speaking with Pretrial Services and knew  
2 that there was previously interest in her serving a surety, the Court finds that Ms. Escorza made her  
3 statement about returning to the United States “if” Defendant Arteaga were released to have been  
4 made either to attempt to bargain in some way for Defendant’s release on conditions or, worse, to  
5 fraudulently induce this Court to release Defendant Arteaga when (as discussed above) she has no  
6 actual intention to return. There is no information in the record as to why Ms. Escorza went to  
7 Honduras, and the Court finds based on the information in the record that Ms. Escorza likely fled to  
8 Honduras in order to avoid the possibility of her own indictment or to avoid being involved in a  
9 criminal investigation further.

10 The fact that Defendant first proposed Ms. Escorza as a potential surety does not put  
11 Defendant’s judgment or credibility in a positive light. As noted, the record provides some basis to  
12 reasonably suspect that Ms. Escorza was at least knowledgeable about, if not involved in, the  
13 potential distribution of narcotics and/or money laundering. Defendant at a minimum would have  
14 a basis to reasonably conclude that Ms. Escorza could be a witness in the prosecution of the charges  
15 against him. Defendant’s proposing Ms. Escorza as the first potential surety gives the Court pause  
16 particularly because Ms. Escorza has now fled to Honduras with his children. The Court finds that  
17 the Defendant has demonstrated poor judgment and thus the Court cannot reasonably trust that the  
18 Defendant would exercise materially better judgment in complying with conditions of release.

19 Further, as noted, Ms. Escorza has a bank account into which significant sums of money  
20 have been deposited. At the hearing, the Government confirmed that this bank account has not  
21 been seized or frozen. It is unclear whether Defendant has access to that account, but should he  
22 have such access, that would provide further financial means to facilitate flight.

23 Finally with regard to family ties, it is undisputed that the Defendant has no family or other  
24 blood relations in the United States. While Mr. Willis referred to the Defendant as “family,” they  
25 are not related by blood or marriage and, as discussed further below, the Court finds that Mr. Willis  
26 and Defendant do not have a sufficiently close relationship to make Mr. Willis an appropriate surety  
27 in any event.

28 With regard to community ties and length of time in the community, the record is at best

1 unclear. As noted, the Defendant was removed from the United States in January 2018 and it is  
2 unknown when he returned to the United States, and uncertain when he returned to the Oakland area  
3 in particular. Defendant only reported residing in Oakland (without being able to provide any but  
4 the most recent address for the last year) for about four years. *See* Dkt. 23 at 1. At the hearing, it  
5 was represented that Ms. Escorza resided in Colorado until relatively recently, and so there is no  
6 reliable evidence of Defendant's community ties or actual residence in the community prior to their  
7 shared residence this past year.

8 With regard to his employment status, Defendant appears to have been employed in  
9 construction for some period in the past, but he is presently unemployed. *See id.* at 2. Indeed, none  
10 of the proposed sureties could testify as to how Defendant earned a living and all testified that they  
11 never discussed work with him.

12 With regard to other past conduct and criminal history, Pretrial Services reports from  
13 criminal records that the Defendant previously used three different aliases and one alternate date  
14 of birth. *See id.* at 4.

15 With regard to past conduct, the records indicate that the Defendant was previously removed  
16 to Honduras from the United States in January 2018 due to his lack of legal status, yet obviously  
17 reentered the United States. *See id.* at 3. The Ninth Circuit has held that the fact that a defendant is  
18 an alien may be taken into account, but alienage does not by itself tip the balance either for or against  
19 detention. *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990). The Court notes Arteaga's  
20 immigration status and history of removal not because of Defendant's alienage, but rather to note  
21 that Defendant has demonstrated a past ability to travel cross-border and to undertake actions which  
22 he knew or should have known were contrary to law. As discussed above, Defendant has incentive  
23 to flee and motive to reunite with his children and significant other in Honduras, and the fact that  
24 he has demonstrated an ability to travel across borders indicates that there exists a higher risk of  
25 such flight.

26 With regard to prior criminal history and court appearances, the record indicates that on May  
27 4, 2022 Defendant failed to appear at an arraignment in his criminal case in Alameda County  
28 Superior Court and, as a result, a bench warrant in the amount of \$60,000 was issued. Defendant

1 appeared at subsequent hearings in that case and posted a bond in the amount of \$60,000.

2 In rebuttal to the Government, the Defendant argued that he would agree to even the most  
3 stringent conditions of release, including location monitoring, curfew, unsecured bond, and other  
4 conditions. Given the fact that Ms. Escorza is no longer in her apartment in Oakland, Defendant  
5 indicated he would agree to release to a halfway house. Defendant argued that he posted a bond in  
6 Alameda County Superior Court, that he made appearances at all but the first hearing in that case in  
7 state court, and that he therefore demonstrated he is not a flight risk.

8 Further, Defendant argued that up to three proposed sureties were available to sign unsecured  
9 bonds on his behalf. As discussed above, there was a changing roster of potential co-sureties and  
10 there was substantial time spent querying and interviewing Mr. Pena, Ms. Logsdon, and Mr. Willis.

11 As discussed, Defendant first proposed Ms. Escorza as a surety and, due to subsequent  
12 events, withdrew Ms. Escorza as a proposed surety. As detailed above, the Court finds that the  
13 record raises serious doubts as to Ms. Escorza's suitability as a surety.

14 The Court finds that all three remaining proposed sureties (Mr. Pena, Ms. Logsdon, and Mr.  
15 Willis) lack the kind of relationship with Defendant which would make them suitable sureties. None  
16 are family members of Defendant, and none are related to him by marriage. None of them discussed  
17 their finances with Defendant. None of them knew details of Defendant's employment history,  
18 details of how he earned a living, or details of his criminal history. None of the proposed sureties  
19 lived with or within walking distance of Defendant. When asked, none of the proposed sureties  
20 described Defendant as their "best friend" and none described the kind of regular one-on-one  
21 interactions that are typical of the kind of close relationship which would be expected for an effective  
22 surety.

23 Ms. Logsdon admitted to being closer friends with Ms. Escorza than Defendant, and only  
24 saw Defendant in group settings when Ms. Escorza or their children were present. Ms. Logsdon is  
25 not fluent in Spanish and admitted to not having deep or substantive conversations with Defendant.  
26 The Government further noted that Ms. Logsdon has prior arrests but, according to Pretrial Services,  
27 she has no criminal history. *See* Dkt. 34 at 2.

1       Mr. Willis admitted to getting to know Defendant because Ms. Escorza was his cousin –  
2 however, he was only recently reunited with Ms. Escorza a few years ago and the two have not had  
3 a long-term ongoing family relationship. Mr. Willis has been unemployed for several months. He  
4 admitted that he has not attended events alone with Defendant, that Defendant has not met Mr.  
5 Willis’s mother or other family (other than Ms. Escorza), and that he came to know Defendant  
6 because of Ms. Escorza’s relationship with Defendant. Mr. Willis admitted he knew of Defendant’s  
7 criminal history but did not “pry” into it with him, and similarly did not “pry” into Defendant’s work  
8 or how he made a living. Mr. Willis has not discussed his finances with Defendant. As noted,  
9 Pretrial Services did not recommend Mr. Willis as a surety. *See* Dkt. 29 at 3. The Government  
10 noted that Mr. Willis has a record of five arrests in California (from 2019 to 2023) and five arrests  
11 in Illinois (from 2005 to 2010), and that Mr. Willis has multiple misdemeanor convictions, including  
12 two for drug offenses. *Id.* at 2.

13       Mr. Pena testified that he interacted with Defendant in group settings because Defendant’s  
14 children played with Mr. Pena’s nephews. Mr. Pena testified that he did not talk about work with  
15 Defendant. The Government noted that Mr. Pena has a criminal history of sixteen arrests from 2006  
16 to 2022 and multiple convictions for various misdemeanors from 2009 to 2023. *See* Dkt. 32 at 2.

17       Fundamentally, after having queried each of the proposed sureties, the Court finds that none  
18 of the proposed sureties appear to be anything more than either friends-of-friends with Defendant  
19 or to be one social friend among a larger group of friends or parents’ group. Accordingly, the Court  
20 finds that the proposed sureties lack moral suasion over Defendant.

21       The purpose of having a surety is to help provide reasonable assurance that the Defendant  
22 will fulfill their legal obligations and appear at all necessary court hearings if released on conditions.  
23 *See, e.g., United States v. Villalobos*, No. CR 00-40242 CW (WDB), 2005 WL 6127290, at \*4 (N.D.  
24 Cal. Feb. 17, 2005) (“Often, a surety bond is essential to delivering the reasonable assurances on  
25 which defendants’ entitlement to release turns.”). But here, where the proposed sureties lack  
26 sufficiently close or personal relationships with the Defendant to provide that assurance, and where  
27 the proposed sureties lack the ability to significantly impact or affect the Defendant’s behavior, the  
28 Court cannot find such reasonable assurances. There are insufficient indicia that Defendant would

1 be substantially deterred from flight if these three proposed sureties were to actually sign on as  
2 sureties. And none of the proposed sureties indicated that they would actively help encourage  
3 Defendant to appear at court hearings; by contrast all of them focused to varying degrees on their  
4 desire to help reunite Defendant with his children.

5 Finally, none of the three proposed sureties have sufficient assets to support the bond  
6 amount should Defendant violate conditions of release. In essence, the bond would be an  
7 uncollectable debt should the Defendant violate any condition of release. The Court notes that  
8 Pretrial Services has consistently recommended that Mr. Willis is not a suitable surety because he  
9 is currently unemployed. Further, the Court notes that the affidavit attached to the search warrant  
10 submitted by the Government, particularly the facts therein as to Mr. Willis and his involvement in  
11 the storage unit, raises at least some doubts as to Mr. Willis's suitability as a surety. While the  
12 Court is not rejecting the proposed sureties simply on the basis that they lack significant assets or  
13 income, the Court notes that their inability to pay the bond amount in the event of a violation of  
14 conditions undercuts the persuasiveness of the sureties to provide assurances that the Defendant  
15 will appear if released on conditions. Indeed, the fact that the proposed sureties refused to  
16 undertake secured bonds demonstrates that there are limits to their willingness to help Defendant  
17 and diminishes the ability of the bonds to influence the Defendant's behavior.

18 There is insufficient indication that imposing a bond on the three proposed sureties would  
19 significantly address risk of flight. Defendant Arteaga's residence was searched in May 2023, his  
20 vehicle was searched on June 28, 2023, and his residence was again searched on November 29,  
21 2023 (each time leading to a seizure of narcotics and large amounts of cash). Defendant  
22 presumably interacted with the three proposed sureties throughout this time frame, and yet he  
23 never changed behavior. The lack of moral suasion is further evident given all three proposed  
24 sureties were at least equally close to Ms. Escorza, if not more so than they are to Defendant, and  
25 yet none of them were in position to persuade Ms. Escorza to remain in the United States (or to  
26 persuade her to return).

27 While the Court considered the feasibility of releasing the Defendant to a halfway house,  
28 the halfway house does not sufficiently address or mitigate the Defendant's risk of flight. Further,

1 Pretrial Services has been checking space availability with the halfway house consistently and  
2 there is currently a wait list. Accordingly, release to the halfway house is not practicable or  
3 feasible at this time anyway. And as noted, the halfway house is only a structured environment  
4 and cannot overcome the factors demonstrating risk of nonappearance discussed above.

5 In light of the facts discussed above, the Court finds that the proposed conditions do not  
6 provide reasonable assurance that Defendant would appear as required.

7 The Government further argues that there are no conditions of release in this case which  
8 would reasonably assure the safety of any other person or the community if the Defendant were  
9 released. While the Court finds that the Government has met its burden of proof with regard to risk  
10 of flight, the Court addresses the issue of danger to the community briefly.

11 First, the Government argues that the Defendant poses a danger to the community because  
12 of the large quantity of fentanyl seized during the searches of his residence and automobile. *See*  
13 Dkt. 24 at 2. The Government argues that fentanyl is such a dangerous narcotic due to overdose  
14 deaths generally in San Francisco that this factor suffices to detain based on dangerousness,  
15 particularly because Defendant “is more than a street dealer” *Id.* However, not all (or even any  
16 quantifiable number) of overdose deaths in San Francisco (which are of course tragic) are attributed  
17 to this Defendant. If the Government’s argument were correct, then it is difficult to discern how  
18 most defendants charged with fentanyl distribution would avoid detention.

19 The Government also argues that, as averred in the search warrant affidavit, a juvenile was  
20 referred to in text messages between Ms. Escorza and Defendant with regard to the delivery of  
21 narcotics from the storage unit to Arteaga. The Government argued at the detention hearing that the  
22 involvement of a juvenile in the accused narcotics distribution demonstrates that Defendant poses a  
23 risk of danger to others or the community. However, the facts averred in the search warrant affidavit  
24 indicate it was Ms. Escorza, not Defendant, who instructed the juvenile and she was the one who  
25 got the juvenile involved. Accordingly, there is insufficient evidence in the record to show that  
26 Defendant was responsible for the involvement of the juvenile in the first instance.

27 The Court is not persuaded on the record in this case that the Government can meet its burden  
28 of proof of dangerousness by clear and convincing evidence as to this Defendant, but the Court need

1 not reach a different conclusion on detention because of the Court's finding on risk of flight.  
2

3 **CONCLUSION**

4 The Court has considered all evidence and arguments presented and has also given due  
5 consideration to the recommendation of U.S. Pretrial Services in this case. These findings are  
6 made without prejudice to the Defendant's right to seek review of Defendant's detention, or to file  
7 a motion for reconsideration if circumstances warrant reopening the detention hearing. *See* 18  
8 U.S.C. § 3142(f).

9 For the reasons stated on the record at the sessions of the detention hearing and for the  
10 reasons as further stated herein, the Defendant was (at the conclusion of the January 12, 2024  
11 hearing) remanded into the custody of the United States Marshal. Pursuant to 18 U.S.C. § 3142(i),

12 **IT IS ORDERED THAT:**

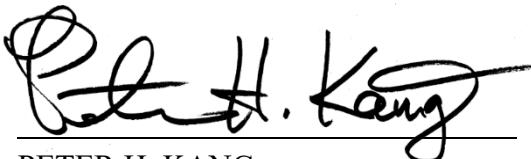
13 1. The Defendant be, and hereby is, committed to the custody of the Attorney General  
14 for confinement in a corrections facility separate, to the extent practicable, from persons awaiting  
15 or serving sentences or being held in custody pending appeal;

16 2. The Defendant be afforded reasonable opportunity for private consultation with  
17 counsel; and

18 3. On order of a court of the United States or on request of an attorney for the  
19 Government, the person in charge of the corrections facility in which the Defendant is confined  
20 shall deliver the Defendant to an authorized United States Marshal for the purpose of any  
21 appearance in connection with a court proceeding.

22 **IT IS SO ORDERED.**

23  
24 Dated: January 16, 2024

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26  
27  
28   
PETER H. KANG  
United States Magistrate Judge